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Lane Community College Board of Education

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON, EUGENE DIVISION

FRANCISCO JAVIER GOMEZ,

Case No. 6:15-cv-01474-mc

Plaintiff,

vs.

LANE COMMUNITY COLLEGE
BOARD OF EDUCATION,

**ANSWER AND AFFIRMATIVE
DEFENSES**

Defendant.

Defendant Lane Community College Board of Education (“defendant”) answers plaintiff’s Complaint as follows:

1. Defendant admits Paragraph 1.
2. Defendant admits Paragraph 2.
3. Paragraph 3 calls for legal conclusions to which no responsive pleading is required. Defendant admits that the Lane Community College Board of Education is the named defendant. To the extent Paragraph 3 makes additional factual allegations, they are denied.

JURISDICTION

4. Paragraph 4 calls for legal conclusions to which no responsive pleading is required.

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5. Paragraph 5 calls for legal conclusions to which no responsive pleading is required. Defendant admits that the United States District Court for the District of Oregon has jurisdiction over the federal claims. To the extent Paragraph 5 makes factual allegations, they are denied.

6. Paragraph 6 calls for legal conclusions to which no responsive pleading is required. Defendant admits that the United States District Court for the District of Oregon has jurisdiction over the federal claims. To the extent Paragraph 6 makes factual allegations, they are denied.

VENUE

7. Defendant admits Paragraph 7.

8. Paragraph 8 calls for legal conclusions to which no responsive pleading is required. To the extent Paragraph 8 makes factual allegations, they are denied.

CLAIM FOR RELIEF: VIOLATION OF 42 U.S.C. § 1983

9. Defendant admits plaintiff was enrolled as a Lane Community College student from September 2012 through June 2014. Defendant denies that plaintiff has been enrolled as a student at Lane Community College since June 2014. To the extent Paragraph 9 makes additional factual allegations, they are denied.

10. Defendant admits plaintiff paid the student activity fee while enrolled from September 2012 through June 2014. To the extent Paragraph 10 makes additional factual allegations, they are denied.

11. Defendant admits Paragraph 11.

12. Defendant denies Paragraph 12.

13. Defendant admits Paragraph 13.

14. Defendant admits Paragraph 14.

15. Paragraph 15 calls for legal conclusions to which no responsive pleading is required. To the extent Paragraph 15 makes factual allegations, they are denied.

16. Defendant admits Paragraph 16.

17. Defendant admits Paragraph 17.

18. Defendant admits Paragraph 18.

19. Defendant admits Paragraph 19.

20. Defendant admits Paragraph 20.

21. Defendant admits Paragraph 21.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

22. Plaintiff has failed to state a claim against Defendant upon which ultimate relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

23. Plaintiff does not have standing to bring this cause of action.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

24. Plaintiff failed to file some or all of his claims within the statutorily provided statute of limitations.

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FOURTH AFFIRMATIVE DEFENSE

(Oregon Tort Claims Act)

25. Plaintiff's claims are against a public entity and, as such, any actions available to plaintiff are subject to the conditions, limitations and immunities set forth in the Oregon Tort Claim Act, ORS 30.260, *et. seq.*

SIXTH AFFIRMATIVE DEFENSE

(Wrong Party)

26. Plaintiff has failed to file his claim against the correct legal entity.

ATTORNEY FEES AND COSTS

27. Defendant is entitled to recover its attorney fees and costs.

WHEREFORE, defendant prays that plaintiff's Complaint be dismissed with prejudice and that he take nothing therefrom. Further stating, defendant requests that it be awarded its costs and attorney fees in defending this action and such other relief as the court deems just and equitable.

DATED this 9 day of November 2015.

GARRETT HEMANN ROBERTSON P.C.



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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing **ANSWER AND AFFIRMATIVE DEFENSES** on the date indicated below,

- ☐ Via First-Class Mail with postage prepaid
- ☒ Via Electronic Filing System
- ☐ Via Facsimile Transmission
- ☐ Via Hand Delivery
- ☐ Via Overnight Delivery

to the following person(s) a true copy thereof, contained in a sealed envelope (if other than by facsimile transmission), addressed to said person(s) at their last known addresses indicated below:

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Attorney for Plaintiff

DATED November 9, 2015.

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